

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In Re:	§	
	§	
POSITIVE HEALTH MANAGEMENT,	§	
	§	
Debtor.	§	
	§	
	§	
RANDY W. WILLIAMS,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. 10-4398
	§	
ABN AMRO MORTGAGE GROUP, INC.,	§	
<i>et al.</i> ,	§	
	§	
Defendants.	§	

**ORDER**

Randy Williams, the bankruptcy trustee in debtor Positive Health Management, Inc.’s Chapter 7 bankruptcy case, filed an action under 11 U.S.C. § 548 against Wells Fargo Bank to avoid certain alleged fraudulent transfers of the debtor. Williams and Wells Fargo have settled their dispute. Wells Fargo seeks to recover the settlement amount from Jennifer Floren, who Wells Fargo claims unfairly benefitted from the debtor’s alleged fraudulent transfers at Wells Fargo’s expense. Both Floren and Wells Fargo have moved for summary judgment. (Docket Entry Nos. 16 and 22).

In support of its summary judgment motion, Wells Fargo submitted an affidavit from Williams. This affidavit states that “Positive Health made nine (9) mortgage payments totaling \$35,990.43 from [its] Texas Capital Account . . . to Wells Fargo” and incorporates by reference Exhibit L-1, which it describes as “true and correct copies of Positive Health’s bank statements from

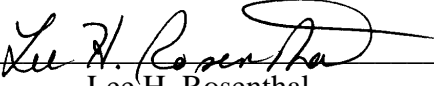
the Texas Capital Account.” (Docket Entry No. 22, Ex. L at 2). This court has examined Exhibit L-1. The bank statements list Positive *Pain* Management, Inc. as the account holder. (*Id.*, Ex. L-1). After Floren highlighted this discrepancy in her response to Wells Fargo’s motion for summary judgment, (Docket Entry No. 23 at 3–4), Wells Fargo provided the following reply:

Positive Health’s Chapter 7 Trustee, Randy Williams, offered affidavit testimony that he thoroughly reviewed and investigated Positive Health’s business and financial records in the course of fulfilling his duties as Chapter 7 Trustee and determined that Positive Health made nine mortgage payments totaling \$35,990.43 to Wells Fargo from Positive Health’s bank account. The bank statements attached to Mr. William’s affidavit verify this claim by showing nine payments totaling \$35,990.43 going to Wells Fargo. Mr. William’s affidavit misidentifies the account number, but nevertheless establishes that the referenced bank statements are from a bank account belonging to Positive Health.

(Docket Entry No. 24 at 1–2). This statement does not explain how “the referenced bank statements are from a bank account belonging to Positive Health.” (*Id.* at 2). Williams states in his affidavit that the bank statements reflect Positive Health’s account, but the bank statements list Positive Pain as the account holder.

By August 23, 2011, Wells Fargo must explain this apparent discrepancy and explain any relationship between Positive Health and Positive Pain. Floren may respond by August 26.

SIGNED on August 16, 2011, at Houston, Texas.

  
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Lee H. Rosenthal  
United States District Judge